CITY COUNCIL OF THE CITY OF ANNAPOLIS

ORDINANCE NO. O-15-04 Amended

Introduced by Alderwoman Hoyle

AN ORDINANCE concerning

Lease of Susan B. Campbell Park for Latin Festival

FOR the purpose of authorizing a lease of the Susan B. Campbell Park located in the harbor and Dock Street areas to ALMAA, Inc., a body corporate, for a certain period of time, subject to certain terms, provisions, and conditions, for the purpose of conducting a Latin Festival; and all matters relating to said lease.

WHEREAS, the Annapolis City Council finds that the premises subject to the proposed lease is not needed by the City for public use during the term of the proposed lease other than the uses specified in the lease; and

* * * * * * * * * * * * * * *

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the leasing of City-owned property.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the proposed Lease Agreement between the City of Annapolis and Tenant for the rental of certain municipal property in the harbor and Dock Street area, a copy of which is included below and made a part hereof, for the period referred to therein, is hereby approved and the Mayor is authorized to execute the Lease Agreement on behalf of the City of Annapolis.

SECTION II: AND, BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that pursuant to City Code, Section 6.04.210D.3, the Annapolis City Council hereby waives or reduces the fees associated with Tenant's use of City facilities (i.e. rent) and services in connection with the use of the property, except as otherwise specified in the Lease Agreement.

SECTION III: AND, BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that pursuant to Section 8, Article III of the Charter of the City of Annapolis, the Annapolis City Council hereby expressly finds that the lease of the Susan B. Campbell Park will better serve the public need for which the property was acquired.

1	SECTION IV: AND, BE IT F	URTHER ESTABLISHED AND ORDAINED BY THE
2	ANNAPOLIS CITY COUNCIL that thi	s Ordinance shall take effect from the date of its passage.
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5	ADOPTED this day of	f, 2004.
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8	ATTEST:	THE ANNAPOLIS CITY COUNCIL
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11		BY:
12	Deborah Heinbuch, MMC	ELLEN O. MOYER, MAYOR
13	City Clerk	
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LEASE AGREEMENT

THIS LEASE AGREEMENT is made this ____ day of ______, 2004, by and between THE CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland (hereinafter called "Lessor") and MARYLAND ALMAA, Inc., a Maryland non-profit corporation (hereinafter called "Lessee").

WHEREAS, Lessor desires to enter into a Lease with Lessor for that purpose and to set forth the responsibilities of Lessee and Lessor related thereto.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing premises and the mutual terms and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE I

Section 1.1. Premises and Term: Subject to the provisions and terms of this Agreement, Lessor hereby leases to Lessee, for the purpose of holding the Latin Festival (hereinafter called the "Festival"), that property described in this Section as more particularly shown on Exhibit A hereto, which is attached hereto and made a part hereof (hereinafter called the "Premises"), from 5 p.m. on Friday, September 24, 2004 to midnight, Saturday, September 25, 2004. Hours of the operation that the Festival is open to the public are limited to:

Dates	Exhibits and Entertainment Times
September 25, 2004	11:00 a.m. to 10 p.m. 8 p.m.

Section 1.2. Rent: The rent for the Premises shall be one dollar plus \$1,940.00 for additional police staffing and \$275.00 for eleven reserved parking spaces.

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Section 1.3. Use of Premises: The Premises may be used by Lessee for Festival activities as specified in Exhibit B, hereto, which is attached hereto and made a part hereof (hereinafter called the "Activities"),. Lessor's agreement to lease the herein identified property to Lessee, in no way creates an obligation for Lessor to furnish any services, materials or equipment (including for example dock facilities) for the Festival, except as specifically provided in Article III hereof.

<u>Section 1.4 Administrative: Modifications:</u> The parties may, at any time, modify the following terms (but no other terms) of this Lease Agreement:

- A. The property or properties to be used and occupied, provided such modifications do not result in an increase or enlargement of the specified properties or alter the areas identified as the Premises herein above; and
- B. The dates and hours during which such property will be used, provided such modifications do not result in an increase or enlargement of the dates or times set forth herein above; and
 - C. Tenant's obligations with regard to security on the Premises and the payment of fees for City inspections of the Premises as provided in section 3.6 hereof.

Following a request by either party for such a modification, pursuant to City Charter, Art.. III, Sec, 8, the Mayor may negotiate and agree to or reject same on behalf of the Lessor without the necessity of an additional ordinance approving that modification. Any such modification shall be set forth in a letter of understanding executed by the parties and appended to this Lease Agreement.

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<u>Section 2.1. Liquor Sales</u>: No alcoholic beverages will be sold or consumed on the Premises.

Section 2.2 Music: Lessee may have live music on the Premises during Exhibit and Entertainment Times as set forth in Section 1.1. Lessee shall take all reasonable measures to comply with 50 foot noise ordinance.

Section 2.3 Hours of Operations: Lessee may operate festivities on the Premises as set forth in Section 1.1. Lessee shall conduct its operations in an orderly and commercially reasonable manner so as not to annoy, disturb (whether via noise or otherwise), endanger or be offensive to others. Lessee shall use and maintain the Premises in such manner so as to avoid the creation of any nuisance from obnoxious odors, smoke, noxious gases, vapors, dust, noise or otherwise, and Lessee shall not keep, store, display or use any explosives or explosive devices at the Premises. Lessee shall maintain the Premises in a clean, orderly and safe condition so as to avoid injury to persons and property. Should Lessee fail to comply with the terms of this provision, Lessor shall have the authority to require Lessee to immediately cease and desist all activities and operations on the Premises.

<u>Section 2.4 Exhibitor List</u>: Lessee shall provide to the City Administrator not later than August 27, 2004 a complete list of all exhibitors, displays, activities, festivities, music, entertainment and operations to take place on the Premises during the term hereof. The list shall not be amended, except for deletions thereto, without the expressed written consent of the City Administrator.

Section 2.5 Exhibitor Licenses/Taxes: Exhibitors who sell merchandise at the Festival shall obtain all required non-City licenses and pay all required federal, state and county and City taxes and fees. This Lease shall satisfy any City licensing requirements for such exhibitors. There shall be no

vendors other than permitted under Section 2.6 of this lease. However, exhibitors can offer product information and related business cards.

Section 2.6. Food and Beverage Sales: Lessee and exhibitors may not sell food and non-alcoholic beverages to the public, however, local merchants may participate in food contests and events on the Premises during the Exhibits and Entertainment Times as specified in Section 1.1. Lessee and exhibitors may sell non-alcoholic beverages to the public.

ARTICLE III

<u>Section 3.1. Facilities and Services</u>: In addition to the use of the Premises during the term set forth above, Lessee shall have use of the facilities and services set forth in this Article under the terms and conditions provided herein.

Section 3.2. Security Services: Lessee shall be responsible for security within the Premises during the term hereof. Lessee shall establish a security liaison with the Annapolis Police Department ("APD") and coordinate all Premise's security with APD according to APD's requirements. In addition to such other requirements as may be imposed by the APD, Lessee shall, at its sole expense, hire licensed professional security officers to provide security within the Premises during the entire term of this Lease at such staffing levels as the APD may, in its discretion, require.

<u>Section 3.3. Fire Services</u>: Following the erection of all booths and other festivities' structures as described under Section 6.1 hereof but before the festival opens to the public, the parties shall meet at the Premises to assure compliance with Fire Department regulations and accessibility of fire lanes and turning radius. No burning, welding, open flame devices or running of watercraft propulsion engines shall be permitted on the Premises.

<u>Section 3.4. Utilities</u>: Lessor shall make available to the Premises, existing water facilities and one electrical outlet. Lessee at its own expense shall install any temporary electrical equipment, lines and devices required to provide power to the Premises, in compliance with National Electric Code. Lessee shall not operate any such equipment, lines or devices until inspected and approved by the City Department of Public Works.

<u>Section 3.5. Other Services</u>: The parties shall coordinate other services in advance of the term of this Lease provided, however, that Lessee shall assume any and all financial responsibility for any such other services as may be required by Lessor.

Section 3.6. Pre-Festivities Inspection: Before the festival opens to the public, Lessee's representative shall meet with representatives of the Annapolis Police Department, Annapolis Fire Department, Director of Emergency Management, Harbormaster, Annapolis Central Services and Annapolis Department of Public Works and inspect the Premises and nearby areas to determine compliance with City requirements. Written approval by representatives of all such inspectors is required before Lessee may open the festival or Premises to the public. Lessor shall not refuse permission to open the festival or any part thereof under this paragraph unless a threat to health or safety has been identified by Lessor to Lessee. Lessor shall make every effort to limit that part of the festival or Premises not opened in the event of such threat and to allow Lessee to open the closed portion of the festival or the Premises as soon as the threat is abated to Lessor's satisfaction. Lessee shall pay Lessor the currently published fees for the required inspections.

Section 3.7. Notice to Correct: Following the inspections referred to in the preceding section, at all times during the term of this Lease, and during festivities on the Premises, Lessee shall promptly comply with all reasonable directives of the City intended to bring Lessee and festivities on the Premises

into compliance with the requirements of this Lease and the City Code, as well as the public safety requirements of the Police Department, Fire Department and Harbormaster.

ARTICLE IV

Section 4.1. Insurance: Lessee shall, at its own expense, obtain and keep in full force and effect comprehensive commercial general liability insurance of no less than One Million Dollars (\$1,000,000.00) combined single limit, bodily injury and property damage; and Three Million Dollars (\$3,000,000.00) umbrella policy; which shall be effective during the entire period of time during which the Lessee shall use or occupy the Premises, or any part thereof.

Such insurance policy shall specifically name the City of Annapolis, and in their capacity as such, the officers, agents and employees thereof, as additionally insured, and insure against any and all loss, costs, damages, and expenses suffered by any person, or to any property, including property owned by Lessor, due to or alleged to be due to: (1) an act, omission or the negligence of Lessee, its officers, agents, employees contractors, patrons, guests or invitees; or (2) to the use of the Premises, or any part thereof by Lessee, its officers, agents, employees, contractors, patrons, guests or invitees.

The insurer or insurers of the policy or policies referred to in the preceding paragraph shall be: authorized to write the required insurance; approved by the Insurance Commissioner of the State of Maryland; and subject to the reasonable approval of the City Attorney of Annapolis. The form and substance of the policy or policies of insurance shall also be subject to reasonable approval by the City Attorney of Annapolis, and shall be submitted to the City Attorney for such approval not later than August 27, 2004. Said policy or policies of insurance shall be filed by Lessee with the City Attorney

of Annapolis not later than the first to occur of 10 days prior to the first day of the term set forth above or 10 days prior to Lessee's occupancy of the Premises.

The Certificate for each such insurance policy shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, whether at the request of Lessee or for any other reason, except after thirty (30) calendar days advance written notice mailed by the insurer to the City Attorney of Annapolis and that such notice shall be transmitted postage prepaid, with return receipt requested.

ARTICLE V

Section 5.1. Hold Harmless/Indemnity: Lessee agrees that it shall forever indemnify, defend and hold harmless the Lessor, its officers, agents, employees, from and against any and all claims, suits, actions, judgments, and liability for loss, injury, damages and/or expenses suffered or alleged to have been suffered by any person or to any property due to or alleged to be due to:

(1) an act, omission or the negligence of Lessee, its officers, agents, employees, contractors, patrons, guests or invitees; or (2) the use of the Premises, or any part thereof, by Lessee, its officers, agents, employees, contractors, patrons, guests or invitees.

Lessee agrees to reimburse Lessor, within thirty (30) days after demand for such reimbursement, for any damage done to Lessor's buildings, facilities, equipment or property caused by the negligence of Lessee, its officers, agents, employees, contractors, patrons, guests or invitees during Lessee's use and/or occupancy of the Premises or any part thereof.

ARTICLE VI

<u>Section 6.1. Interior Construction</u>: Lessee shall have the right to construct, install or erect upon the Premises such seats, booths, tents, exhibits

and any other apparatus or structure which Lessee may deem necessary or desirable for its purposes. Lessee shall not have the right to enclose the Premises in such a manner as to limit entry onto the Premises or any part thereof.

Section 6.2. Permits: Subject to the inspection provisions of Article III and to standard public safety and health approvals, any and all zoning permits, any and all licenses or authorizations required to be obtained from the City of Annapolis or any agency thereof by the Lessee for the purpose of constructing or erecting the temporary structures described in Section 6.1 above or for operating the festival shall be deemed granted and issued upon the execution of this Lease by the Lessor and Lessee. All other Federal, State or County permits which may be required shall be the responsibility of the Lessee.

ARTICLE VII

<u>Section 7.1. Trash</u>: Lessee, at its sole expense, shall provide the number of trash containers within the Premises as required by the Director of Public Works in his sole discretion during the entire occupancy period of the Premises and shall provide for the prompt removal of said containers, trash and refuse by a City-approved waste-removal contractor.

<u>Section 7.2. Cleanliness</u>: Lessee, at its sole expense, shall be responsible for keeping the Premises free of unnecessary trash and refuse and shall place the same in the trash containers referred to in the preceding section. Lessee shall at all times during the occupancy of the Premises police the Premises for trash and refuse removal.

<u>Section 7.3. Sanitation and Toilets:</u> Lessee, at its sole expense, shall provide adequate and sanitary toilet facilities throughout the Premises for use by the general public and others attending or participating in the festivities, at the locations designated by the Director of Public Works in his sole discretion.

ARTICLE XIII

Section 8.1. Quiet Enjoyment: Lessor covenants with Lessee that at all times during the term of this Lease Agreement, Lessee shall peacefully hold and quietly enjoy the Premises in a manner consistent with the terms of this Lease without any disturbance or hindrance from Lessor or from any other person claiming through Lessor, except that the Lessor or others claiming through the Lessor may enter onto the Premises to effect necessary repairs to their own facilities as reasonably contemplated by the terms of this Agreement, to assure compliance with the terms of this Agreement and for public safety reasons. Lessee shall cooperate with the Lessor to effect this access to the Premises.

ARTICLE IX

<u>Section 9.1. Condition of Premises After Festival</u>: Following its occupancy of the Premises, Lessee, at Lessee's sole expense, shall return the Premises in the same or superior condition than received, natural wear and tear excepted.

Section 9.2. Lessee's Equipment After Festival: Prior to the expiration of the term of this Lease, Lessee shall remove all property, fixtures and chattels from the Premises placed thereon in conjunction with the festival. In the event that Lessee, its officers, agents, employees or contractors fail to remove any such item of property, Lessor reserves the right to remove and store any such property after the expiration or termination of this Lease at Lessee's expense or, as an alternative, to leave the property at the Premises. In either case, Lessor shall charge Lessee per diem rental for storage of such property. Lessor shall bear no responsibility or liability for damage to or expense incurred as a result of property left, removed or stored under the

provisions of this Section. Lessee shall pay to Lessor any expenses or charges under this Section within thirty (30) days after delivery of any bill by Lessor to Lessee. If any property is not claimed by Lessee within sixty (60) days of the Lease term, Lessor may sell same at private or public sale under such terms as Lessor may deem appropriate in its sole discretion and apply such proceeds as it may deem appropriate in its sole discretion.

Section 9.3. Post-Festival Inspection: Within two (2) days following the expiration of the term of this Lease, Lessee shall accompany Lessor's representative during a tour of the Premises to determine the condition thereof. If Lessee fails to participate in the two or when scheduled, Lessor may conduct a tour without Lessee's participation. Items corrected or repaired by the Lessor, deemed by Lessor to be the responsibility of Lessee, shall be billed by the Lessor and paid by the Lessee within thirty (30) days after receipt of such bill.

ARTICLE X

Section 10.1. Remedies: It is understood and agreed that any and all duties, liabilities and/or obligations imposed upon or assumed by the Lessee and Lessor by or under this lease shall be taken or construed as cumulative and that the mention of any specified duty, liability or obligation imposed upon or assumed by Lessee or Lessor under this lease, shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities, or obligations imposed upon or assumed by the Lessee under this Lease and that all remedies provided herein shall be construed to be cumulative and in addition to any other remedies provided herein, or any remedies provided in law or equity which the Lessor or Lessee would have in any case. It is understood and agreed that either party shall have the right to seek and obtain in any court of competent jurisdiction an injunction without the necessity of posting a bond to restrain a violation by the other party of any covenant or covenants contained in this Lease, anything to the contrary

notwithstanding. In no case shall a waiver by either party of the right to seek relief under this provision constitute a waiver of any other or further such right. The remedies provided hereunder shall not be deemed exclusive of other remedies not specified.

<u>Section 10.2.</u> Authority to <u>Lease</u>: In the event that it is ever determined by a court of competent jurisdiction that Lessor lacks the authority to lease any portion or all of the property herein intended to be leased, Lessor shall not be liable for any losses or damages sustained by Lessee as a result thereof.

Section 10.3. Immunities: Notwithstanding any provision in this Lease, implicitly or explicitly to the contrary, Lessor reserves any and all immunities, partial or total, statutory or common law, in any proceeding related to this Lease, to the festivities referred to herein or to the use of the Premises (or any part thereof) before, during or after the term of this Lease. Such reservation of rights shall extend to any claim made by or through Lessee and to any claim made by or through any third party.

ARTICLE XI

Section 11.1. Impossibility of Performance: If, for any reason, an unforeseen event not the act of Lessor occurs, including but not limited to flood, severe weather, fire, casualty, act of God, labor strike or other unforeseen occurrence which renders impossible the fulfillment of any rental period of this lease, Lessee shall have no right to nor claim for damages against Lessor; but Lessee shall not be liable for the payment of rent for said rental period, except that if such impossibility relates only to part of the rental period, rent shall be prorated; however, this Lease shall not terminate but shall continue in accordance with the terms of this Lease.

ARTICLE XII

Section 12.1. Payment: Lessee shall make all payments due under this Lease by check, payable to the City of Annapolis, and deliver the payments to the Annapolis Finance Department, 160 Duke of Gloucester Street, Annapolis, Maryland, 21401. In addition to all other amounts due hereunder, Lessee shall pay Lessor a monthly late fee of 1.5% (18% per annum) of any payment required hereunder that is more than sixty (60) days past due, until paid.

ARTICLE XIII

<u>Section 13.1. Time is of the Essence</u>: Time is of the essence in the performance of this Lease, and the times herein granted shall not be extended for any reason, except as provided herein, for the occupancy or use of the Premises or for the installation or removal of equipment, materials or displays therefrom without written permission from Lessor.

ARTICLE XIV

 Section 14.1. Assignment: Lessee shall not assign or transfer this Lease, in whole or in part, or any of its rights hereunder, without the prior written consent of the Lessor, which consent shall not be arbitrarily withheld.

ARTICLE XV

 <u>Section 15.1. Non-Agent</u>: Lessee herein is an independent contracting party and not the agent or employee of the Lessor.

<u>ARTICLE XVI</u>

<u>Section 16.1. Liens, Remedies, etc</u>: Lessee hereby consents to and

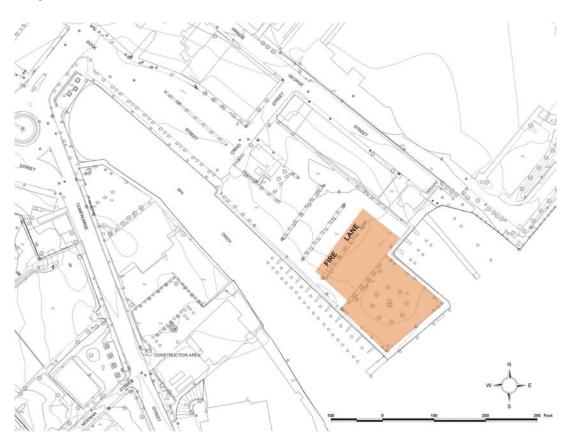
Lessor shall have a lien upon all goods, personal property and fixtures of Lessee located upon the leased Premises for any and all unpaid charges which arise under this Lease. Lessee hereby consents to and Lessor shall have the power to impound and retain the possession of such goods, personal property and fixtures until all such charges and fees due under this Lease have

1	been paid, in full, to the satisfaction of Lessor. In the event such charges
2	remain unpaid thirty (30) days after the termination of the term of this Lease,
3	Lessor shall have the power to sell such property at public auction, and apply
4	the receipts from such auction to all such unpaid charges.
5	ARTICLE XVII
6	Section 17.1. Compliance with All Laws: Lessee agrees to comply
7	with all laws, ordinances, and statutes applicable to the Premises, or any part
8	thereof, and the use thereof, and to pay all taxes or charges imposed by law
9	in connection with Lessee's use and occupancy of the Premises.
10	ARTICLE XVIII
11	Section 18.1. Contact Persons: For purposes of coordinating
12	inspections, providing notices and other matters set forth under this Lease,
13	except as otherwise provided in this Lease, the parties designate the following
14	contact persons:
15	
16	A. Lessor: City Administrator
17 18	160 Duke of Gloucester Street Annapolis, Maryland 21401
19	Phone No. 410-263-7939
20 21	B. Lessee: ALMAA, Inc.
22	P. O. Box 1944
23	Annapolis, MD 21404
24 25	Attention: Maria D. Sasso
26	ARTICLE XIX
27	Section 40.4 Lead Exhibitores Leaded shall use its heat efforts to
28	Section 19.1. Local Exhibitors: Lessee shall use its best efforts to
29	contract with Annapolis exhibitors in all matters related to the festival.
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31	ARTICLE XX

1	Section 20.1 General Powers: Nothing herein shall be construed to		
2	preclude the City from exercising its general public safety powers as it deems		
3	appropriate to protect the public safety, interest and welfare.		
4	ARTICLE XXI		
5	Section 21.1 Authority: This Lease Agreement is authorized by		
6	Ordinance O-15-04.		
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8	IN WITNESS WHEREOF, the parties hereto, by and through this duly		
9	authorized agents, have caused this Lease to be executed this lease this		
10	day of, 2004.		
11 12 13 14	ATTEST: CITY OF ANNAPOLIS		
15 16 17 18 19	Deborah Heinbuch, MMC City Clerk BY: ELLEN O. MOYER, MAYOR		
20 21 22	ALMAA, INC .		
23 24 25 26 27 28 29 30 31 32 33 34 35 36 37	WITNESS BY: Ives Martinez President Address: P. O. Box 1944 Annapolis, Maryland 21404 Phone: 410-757-2973 BY: Maria D. Sasso, Executive Director Address: P. O. Box 1944 Annapolis, Maryland 21404 Phone: 410-757-2973		

1 ANNAPOLIS LATIN FESTIVAL 2 September 25 and 26, 2004

Exhibit A



Lease to O-15-04 Amended
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Exhibit B

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LIST OF ACTIVITIES/EVENTS

TO BE PROVIDED WEEK OF MAY 10TH